IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10840 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI @ HARSHADBHAI S/O MOHANBHAI MASHRI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10840 of 2001

MS. K.C. THAKKAR for MR YOGESH S LAKHANI for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 17th October, 2001 passed by the

Commissioner of Police, Rajkot City, in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority has considered two registered offences against the detenu for offences punishable under Sections 420, 463, 464, 465, 469, 470, 471, 472, 477 etc. Act. The detaining authority has also considered statements of two anonymous witnesses, and recorded a satisfaction that powers under Section 9(2) of the Act are required to be exercised in larger public interest. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate Ms. Thakkar submitted that last registered offence is of 7.5.2001, whereas the order is passed on 17.10.2001 i.e. after a period of more than 5 months and the live-link between the activity of the petitioner and the order is snapped. The second fold of contention of Ms Thakkar is that the detaining authority has exercised the power under Section 9(2) of of the PASA Act without any basis. She submitted that the satisfaction recorded by the detaining authority about the genuineness and correctness of the fear expressed by the witnesses qua the detenu is recorded without undertaking proper exercise. The verification is done in a mechanical manner as a formality. The exercise of power therefore has infringed the right of the petitioner guaranteed under Article 22(5) of the Constitution of India and the continued detention of the detenu therefore would be illegal. She therefore urged that the petition may be allowed and the impugned order may be quashed and set aside.

3.1 Learned Counsel for the detenu further argued that there is nothing to indicate that there was disturbance to public order when the registered offences were committed. So far as statements are concerned, she submitted that there is no material to indicate that the power was properly exercised by the detaining authority under Section 9(2) of the PASA Act after undertaking due enquiry and verification regarding genuineness of the fear expressed by the witnesses and the need for use of

power under Section 9(2) of the PASA Act, in comparison to the right of the detenu envisaged under Art. 22 of the Constitution of India. She has placed reliance on the decision of this Court in Bai Amina Vs. State of Gujarat, reported in 22 GLR 1186 and subsequent judgements wherein the said decision has been followed.

4. Learned AGP Mr. S.S. Patel has opposed to this petition.

5. Having regard to the contentions raised, at the out-set it would be noted that there is no material to indicate that the detaining authority has undertaken proper exercise of verification of the fear expressed by the anonymous witnesses qua the detenu and its genuineness. There is nothing to indicate that any exercise except calling the witnesses was undertaken by the authority. As observed by this Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu. In this regard, decisions in the case of Kajalben G. Sindhi Vs. Commissioner of Police, Ahmedabad, reported in 2000 (2) GLR 1296 and Israil @ Israr Pahelvan Nazirahmed Shaikh Vs. State of Gujarat - 2001 (1) GLR 306 can be profitably be employed.

5.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the sponsoring authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of

the PASA Act.

6. So far as the registered offences are concerned, they relate October, 2000 and May, 2001. The order is passed on 17th October, 2001 and as such the live-link between the activity and the order can be considered to have snapped. The satisfaction of the authority about continuation of illegal activity by the detenu therefore cannot be considered as genuine particularly when the statements cannot be relied upon for the reasons discussed above.

7. For the reasons stated hereinabove, the petition deserves to be allowed and the same is allowed. Order of detention dated 17.10.2001 passed by the Commissioner of Police, Rajkot City is quashed and set aside. Detenu Manubhai @ Harshadbhai be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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